

McNamara Declaration

Exhibit 19

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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HACHETTE BOOK GROUP, INC.,
HARPERCOLLINS PUBLISHERS LLC,
JOHN WILEY & SONS, INC., and
PENGUIN RANDOM HOUSE LLC,

Plaintiffs,

vs. Case No. 1:20-cv-04160-JGK

INTERNET ARCHIVE and DOES 1
through 5, inclusive,

Defendants.
-----x

REMOTE VIDEOTAPED DEPOSITION BY VIRTUAL ZOOM OF
SUSAN HILDRETH
Monday, May 17, 2022

Reported By: Lynne Ledanois, CSR 6811
Job No. 5228055

1 BY MS. McNAMARA:

2 Q And if I understand your testimony, you
3 believe that's fair if those -- if that flexibility
4 results in less money being paid to the publishers
5 or authors?

6 MS. LANIER: Objection, mischaracterizes
7 previous testimony. Go ahead, Susan.

8 THE WITNESS: My comment was that I think
9 it could be likely that with CDL materials meeting
10 some patron requests, the result that the library
11 would not necessarily have to license that specific
12 title to meet a patron demand, they would be able
13 and it is likely that they would purchase additional
14 e-materials, other materials -- other e-materials to
15 meet other patron demand.

16 BY MS. McNAMARA:

17 Q When you say that they wouldn't have to
18 pay for that specific title, you understand then
19 that that specific author would not receive a
20 royalty even if they -- even if they acquired
21 e-books from another publisher or another author; is
22 that correct?

23 MS. LANIER: Objection. Again, I'm not
24 sure I understand that question or who "they" refers
25 to in the context --

1 MS. McNAMARA: Jessie, and I would suggest
2 to you we have had a strict rule in these
3 depositions that you do not have speaking
4 objections.

5 You can say objection to form. You can
6 say, you know, something like vague. But you get
7 into specifics, you're coaching the witness and I
8 ask you to stop.

9 MS. LANIER: Well, I respectfully object
10 to your classification of my objections as coaching
11 the witness. I also don't think that was a speaking
12 objection.

13 I'd just ask you to rephrase the question,
14 please.

15 MS. McNAMARA: I'll ask the witness to do
16 so, not you.

17 Q Ms. Hildreth --

18 MS. McNAMARA: Can we have read back the
19 last question?

20 (Discussion off the record.)

21 (Requested testimony read by the reporter.)

22 MS. LANIER: Same objection.

23 BY MS. McNAMARA:

24 Q Can you answer the question, Ms. Hildreth?

25 A I understand that a specific author would

1 not receive a royalty for a specific title. I am
2 looking at the situation in my mind more globally in
3 terms of overall what royalties would go to not a
4 specific author but a number of authors.

5 So that's my response to that.

6 Q If the specific title that was available
7 through CDL was *Catcher in the Rye* by J.D. Salinger,
8 let's say, and you would agree that then the
9 Salinger estate would not receive a royalty if that
10 work was available via the Internet Archive and CDL?

11 MS. LANIER: Objection, calls for
12 speculation.

13 THE WITNESS: I'd have to know the context
14 of that question and I mean -- frankly, I'd have to
15 know the context of the question and there could be
16 many other avenues for obtaining access to
17 *The Catcher in the Rye* than purely relying
18 necessarily on CDL or the Digital Lending Library
19 for it.

20 BY MS. McNAMARA:

21 Q Do you have a general opinion,
22 Ms. Hildreth, as to whether the plaintiffs have
23 suffered any economic harm as a result of the
24 Digital Lending Library?

25 A I'm challenged in answering that question

1 A My opinion is not necessarily based on fact.
2 But from what I know of the e-book demand for --
3 generally in public libraries in the CD O or available
4 at a Digital Lending Library is a factor there.

5 But the demand for e-books and the revenue
6 that publishers and authors have had from the
7 expansion of the e-book market in public libraries
8 would lead me to the opinion that publishers and
9 authors are receiving -- are receiving funds as a
10 result of e-books in the library marketplace.

11 Q The question really was not whether they
12 are receiving funds in the library marketplace,
13 because as I understand your testimony, you
14 recognize that there is a thriving e-book licensing
15 market for libraries; isn't that right?

16 A Yes.

17 Q And it's a thriving e-book market that has
18 increased in recent years; isn't that right?

19 A Correct, yes.

20 Q And that e-book market is predicated on
21 licensing revenues that are paid by libraries to
22 entities like OverDrive; is that right?

23 A Correct, yes.

24 Q And CDL does not pay those same licensing
25 revenues or Internet Archive's CDL practices do not

1 A Yes.

2 Q Are you suggesting that acquisition
3 budgets are at particular risk of being squeezed
4 because they are discretionary?

5 MS. LANIER: Objection, vague as to
6 "squeezed."

7 THE WITNESS: I am suggesting that it is
8 not uncommon that required expenses -- legally
9 required expenses, say insurance or updating of fire
10 equipment or a variety of expenses that are required
11 to keep a building open to the public may take
12 priority over expenses allocated to materials.

13 BY MS. McNAMARA:

14 Q In Paragraph 109 of your report, you
15 indicate that "In light of the priority of materials
16 acquisition and the current state of limited budgets
17 for those materials, libraries would not reduce
18 their materials budgets if reliance on CDL for
19 certain digital content reduced their spending on
20 the particular titles that were provided through
21 CDL."

22 Do you see that?

23 A Yes.

24 Q Is it your expert opinion that libraries
25 will spend less money on licensing the e-book

1 habits and book habits of patrons over many years.

2 Q Have you done any -- are you aware of any
3 research that has been made available to you
4 concerning why patrons of the Internet Archive use
5 the one-hour option?

6 A No. No, I've not seen anything, any
7 research.

8 Q So as you sit here today, you have no
9 information that would substantiate that most users
10 of the one-hour option are in order to browse?

11 MS. LANIER: Objection, mischaracterizes
12 her prior testimony and asked and answered.

13 THE WITNESS: I don't have any factual
14 information on how anyone might be using that one
15 hour of browsing.

16 BY MS. McNAMARA:

17 Q But we can agree that someone could read
18 most, if not all of the work in that one hour?

19 MS. LANIER: Objection, asked and answered
20 multiple times, vague, calls for speculation and
21 lacks foundation.

22 THE WITNESS: I think it really is a
23 determination based on the type of e-book, the
24 amount of content, the length, the subject matter,
25 whether -- certainly some could be read in an hour

1 but many could not be read in an hour at all.

2 BY MS. McNAMARA:

3 Q You have not done any survey to determine
4 what percentage of books available on Internet
5 Archive for the one-hour option could be read in
6 their entirety?

7 MS. LANIER: Objection --

8 MS. McNAMARA: Excuse me.

9 MS. LANIER: Sorry, Liz, I could not tell
10 when you finished the question because you paused.
11 Forgive me.

12 MS. McNAMARA: I was pausing.

13 MS. LANIER: I understand that now.

14 BY MS. McNAMARA:

15 Q Did you hear the question, Ms. Hildreth?

16 A Yes, I heard the question. And I have no
17 research in regard to how the one-hour browsing is
18 used.

19 MS. McNAMARA: Let's go off the record and
20 I'm going to go through a few things. I'm very
21 close to being done, you'll be happy to hear,
22 Ms. Hildreth. And so let me go through and see
23 what, if anything, I need to ask you.

24 Let's come back probably in five or ten
25 minutes.

1 I, LYNNE M. LEDANOIS, a Certified
2 Shorthand Reporter of the State of California, do
3 hereby certify:

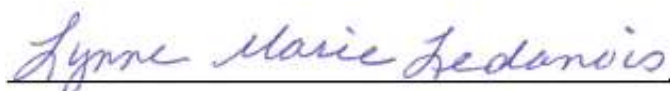
4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth;
6 that a record of the proceedings was made by me
7 using machine shorthand which was thereafter
8 transcribed under my direction; that the foregoing
9 transcript is a true record of the testimony given.

10 Further, that if the foregoing pertains to
11 the original transcript of a deposition in a Federal
12 Case, before completion of the proceedings, review
13 of the transcript [X] was [] wasn't requested.

14 I further certify I am neither financially
15 interested in the action nor a relative or employee
16 of any attorney or party to this action.

17 IN WITNESS WHEREOF, I have this date
18 subscribed my name.

19
20
21 Dated: May 19, 2022

22 
23

24 _____
LYNNE MARIE LEDANOIS

25 CSR No. 6811